IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1935 OF 2005

Smt. Krishna H. Bajaj ..Petitioner.

Vs.

Bharatiya Bhavan Co-operative Housing Society Ltd. & Ors. ..Respondents.

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Mr. Cyrus Ardeshar i/b M/s. Goenka Law Associates for the Petitioner.
Mr. V.S. Kapse for Respondent No.1.
Mr. P.G. Sawant, AGP for Respondent Nos.2 to 4.

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CORAM: DR. D.Y. CHANDRACHUD, J.

21st December, 2006.

P.C. :

1. Aggrieved by the two recovery certificates dated 10th January, 2005 issued by the Deputy Registrar, Co-operative Societies, 'A' ward, Mumbai (Exhibits Q-1 and Q-2 to the Petition), the Petitioner filed revision applications under Section 154 of the Maharashtra Co-operative Societies Act, 1960. The Divisional Joint Registrar of Co-operative Societies in his orders dated 14th March, 2005 (Exh. S-1 and S-2) held that the revisional applications could not be entertained for want of compliance with the requirement of a pre deposit of 50% of the recoverable dues

under Section 154(2A) of the Maharashtra Co-operative Societies Act, 1960. The Petition impugns the orders passed by the Divisional Joint Registrar.

2. The submission of the Petitioner before the Court is that the Petitioner herein had filed a co-operative dispute against the First Respondent which was rejected by the Co-operative Court. Against the decision of the Co-operative Court an appeal was preferred before the Co-operative Appellate Court which was allowed by an order dated 17th July, 2006. The order of the Co-operative Appellate Court decreed the claim of the Petitioner against the First Respondent in the amount of Rs.46,78,562.50 being the cost of recasting the overhead terrace above the flats belonging to the Petitioner together with interest at the rate of 12% per annum from September 2004. Damages in the amount of Rs.40 lacs have been awarded to the Petitioner together with interest at the same rate. In clause 5 of the order of the Appellate Court it has been observed as follows :

> "It is hereby declared and ordered that society is not entitled to recover maintenance charges of the suit flats except charges payable to B.M.C. right from April 2001 upto December 2005."

3. The submission on behalf of the Petitioner is that the recovery certificates covered a part of the same period in respect of which the society has been injuncted by the Co-operative Appellate Court from recovering the maintenance charges of the flats in the occupation of the Petitioner (except for charges payable to the Municipal Corporation). It has been urged that the aforesaid direction of the Co-operative Appellate Court has not been stayed by a Learned Single Judge of this Court while admitting writ petition 6082 of 2006 that was preferred by the co-operative society against the judgment dated 17th July, 2006.

4. The orders passed by the Learned Single Judge of this Court in the civil applications for stay of the order of the Co-operative Appellate Court have been placed on the record. Initially by an order dated 20th October, 2006 the Petitioner before the Court in these proceedings was permitted to withdraw an amount of Rs.50 lacs out of the bank accounts of the co-operative society which were attached in the course of the execution proceedings. Apart from the aforesaid direction, the society was directed to deposit an amount of Rs.30 lacs which was to be invested in a

nationalized bank subject to the outcome of the Petition. In a subsequent order dated 14th December, 2006 on an application for clarification of the earlier order the learned Single Judge held as follows :

> "While passing the order on 20th October, 2006 the said application was disposed of, but as rightly submitted by the learned Advocate for the applicant that by over sight the limited relief of stay which was intended to be granted on compliance of the directions issued under order dated 29th November, 2006, the same remained to be incorporated in the said order. In fact, the order of 29th November, 2006 therefore, should be read alongwith the grant of limited stay to the execution of the decree in the nature of permitting the applicants/ petitioners to operate bank accounts. It is made clear that there shall not be any stay on the order of attachment of the properties and the said attachment shall continue."

These observations of the Learned Single Judge would make it clear that the decree of the Co-operative Appellate Court was stayed to a limited extent viz. by permitting the co-operative society to operate its bank account conditional on the Petitioner being allowed to withdraw an amount of Rs.50 lacs and the society depositing an amount of Rs.30 lacs before this Court. The attachment has, however, not been lifted.

5. In these circumstances, it would clearly emerge that the

entitlement of the co-operative society to recover maintenance charges (other than charges payable to the Municipal Corporation) for the period between April 2001 upto December 2005 would depend upon the outcome of the pending writ petition. The recovery certificates admittedly cover part of the same period viz. from 1st January 2002 to 30th September, 2003. In these circumstances, Counsel appearing for the Petitioner has taken instructions and furnished an undertaking to the Court that in the event that writ petition 6082 of 2006 referred by the co-operative society against the order of the Co-operative Appellate Court dated 17th July, 2006 is allowed, the Petitioner shall within a period of four weeks of the decision of the Court (subject to the remedies of the Petitioner that are available in accordance with law) pay up the maintenance charges covered by the recovery certificates dated 10th January, 2005. In the meantime, Counsel appearing for the Petitioner has stated that since the Co-operative Appellate Court has not injuncted the co-operative society from demanding the charges of the Municipal Corporation, the Petitioner shall pay the said charges to the co-operative society within a period of two weeks of the co-operative society furnishing a break up of the charges due and payable. In view of the aforesaid direction,

Counsel appearing for the Petitioner states that the revision applications before the Divisional Joint Registrar shall be withdrawn and may be dismissed as withdrawn. There shall be an order accordingly in the aforesaid terms. The Petition shall stand disposed of in the light of the aforesaid directions.